performance, no general charitable intention can be inferred from the terms of the trust. If the trust lapses by reason of its becoming incapable of performance there is a resulting trust in favour of the settlor or, as in this case, in favour of his estate.

The only remaining question for consideration is whether the lapsed devise or trust goes to the residuary legatees or to the next of kin. Mr. Ong Huck Lim contended that it went to the residuary legatees, whereas Mr. Lim Cheng Ean argued that it went to the next of kin. I have always understood the law to be that a lapsed devise falls into residue, whereas a lapsed share of the residue goes to the next of kin as upon a partial intestacy. (See *Jarman on Wills*, 8th edition, Volume I, pages 468-9 and Volume II page 1030). I am therefore, of the opinion that in the event of the charitable trust lapsing by reason of impossibility of performance there would be a resulting trust in favour of the residuary legatees under the Will of the deceased.

To recapitulate, I accordingly hold:—

(i) That the deed of trust dated 8th May, 1912, at the present time constitutes a valid existing charitable trust; and

(ii) That in the event of the trust lapsing by reason of impossibility of performance, the terms of the trust cannot be construed in favour of a general charitable trust capable of being administered *cy-prés*, but that there is a resulting trust in favour of the residuary legatees of the settlor's estate.

Order accordingly.

Solicitors: *Ong Huck Lim & Co.; Chew Choon Poon; Presgrave & Matthews; Lim Cheng Ean.*

In re G. H. CONAGHAN

[O. C. J. (Thomson C.J., Hill J.A. and Ong J.) October 24, 1960]

[K. L. — Originating Motion No. 6 of 1960]

Advocates and Solicitors — Professional misconduct — High standards of conduct to be observed by the legal profession — Public interest.

The respondent, in his capacity as a solicitor, received $14,000 from a third party for payment to a client. The sum received was not paid to the client but was knowingly applied by the respondent to other purposes.

Held: what the respondent had done amounted to professional misconduct of the most serious character.

Per curiam: The legal profession occupies by law a privileged position. The continued existence of that position can only be justified if every individual member of the profession conforms to certain standards.

ORIGINATING MOTION.

Ong Huck Lim for the Disciplinary Committee.

C. O. Lim for the respondent.

Thomson C.J. (delivering oral judgment of the Court): The facts of this unfortunate case are not in controversy and unfortunately are only too clear.

We are in no way concerned with the domestic arrangements of the firm of Conaghan, Wreford & Thornton for it is abundantly clear that the conduct of the business of that firm in Penang was under the sole control of the present respondent.

He, in his capacity as a solicitor and having control of the firm, received $14,000 from a third party for payment to a client for whom the firm was acting. It is equally clear that that money was not, and to this day has not been, paid to the client for whom it was received but has been knowingly applied to other purposes.

That may or may not amount to fraud. It may or may not amount to dishonesty. It may or may not be capable of being described by the euphemism of "miscalculation" which has been used, but it certainly does amount to professional misconduct of the most serious character.

We have listened to a plea for leniency. I need hardly say we have given such weight as we possibly can to that plea. Nevertheless the fact remains that in all these cases there are three interests to be concerned. There is the interest of the solicitor; there is the interest of the legal profession as a whole; and there is the interest of the public. The legal profession occupies by law a privileged position. The continued existence of that position can only be justified if every individual member of the profession conforms to certain standards.

The present respondent has fallen far short of these standards. In consequence he has done harm not only to himself but also to his client and to his profession as a whole and to the public for in the modern world it is in the public interest that there should be a legal profession observing the highest possible standards of conduct.

In the circumstances we feel we have no option but to order the respondent to be struck off. There will be an order that he pays the costs of these proceedings which we assess at $500.

Order accordingly.

Solicitors: *Pillai, Lim, Lee & Hwang; Lim, Lim & Oon.*

TEOH AH POW v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) November 1, 1960]

[Penang — Criminal Appeal No. 35 of 1960]

Gaming — Common Gaming Houses Ordinance, 1953, ss.7 and 16 — Forfeiture — Gaming House — Public place.

The appellant was convicted together with another person of being found gaming in a public place contrary to section 7 of the Common Gaming Houses Ordinance 1953. In his defence the appellant said that he had gone to the house to look for a friend and that he had taken no actual part in gaming. The learned Magistrate disbelieved the accused and convicted him, fining him $50. The learned Magistrate purporting to act under section 16(2) of the Common Gaming Houses Ordinance ordered that the loose money found in the appelllant's pocket be

forfeited on the ground that that it was money used or intended to be used for gaming. On appeal:

Held: (1) the Magistrate had no power to make the order for forfeiture under section 16(2) of the Common Gaming Houses Ordinance;

(2) it is only in relation to common gaming houses and where a search warrant has been issued under section 16(1) of the Ordinance that the Magistrate is entitled to exercise his powers of forfeiture under section 16(2). The appellant was found not in a common gaming house but in a public place.

(3) the provisions of section 7 of the said Ordinance must be strictly construed and the power vested in a Court to order a forfeiture must be confined to those instruments or appliances (including money) strictly proved to have been used in the playing of the game of chance and cannot be extended to include — as under section 16(2) — money found on a person escaping therefrom which the Magistrate is merely of the opinion that such money was "used or intended to be used" in the game.

CRIMINAL APPEAL.

Lee Thean-Chu for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J.: The appellant was convicted, together with another person, of being found gaming in a public place, contrary to section 7(2) of the Common Gaming Houses Ordinance, 1953.

The brief facts of the case were that on the afternoon of the 25th August, 1960, a Police party, acting on information received, raided a waste piece of land at Kampong Permatang Rawa, in the district of Bukit Mertajam. On the piece of land was an open unwalled shed. Inside the shed some 15 to 20 persons were congregated. As the Police approached the shed someone shouted: "Mata Lai", and the occupants of the shed took to their heels and ran away. The appellant was one of those who ran. He was caught by a Police Inspector about 15 yards from the shed. He was searched and in his trouser pocket $170.90 was found, and in his purse a further $107. The appellant is a lorry driver, aged 44. In the shed itself the Police found a table. On the table was a chart divided up into squares. On the chart was a four-sided top with inscriptions on each side. A porcelain plate was found nearby. There were, in fact, all the appliances present to show that the game of blangkas was being played before the Police arrived.

In his defence the appellant gave evidence that he had gone to the place to look for a friend whom he had been told was gaming there. He had not actually reached the shed when he first saw the Police, and he ran away because everyone else ran away. The money in his purse was his own money, and the loose money in his pocket was money belonging to a friend.

The Magistrate disbelieved the accused and convicted him of the offence as charged. He fined him the sum of $50 and, purporting to act under section 16(2) of the Common Gaming Houses Ordinance, ordered that the loose money amounting to $170.90 found in his pocket be forfeited on the ground that it was money used or intended to be used for gaming.

The accused appealed against both the conviction and sentence. At the commencement of this appeal Mr. Lee Thean-Chu, on behalf of the accused, informed the Court that he abandoned the appeal against the conviction and restricted his appeal against the sentence to that part of the order directing the forfeiture of the $170.90.

It is quite clear that the learned Magistrate had no power to make the order for forfeiture under section 16(2). That Section is restricted to the confiscation of gaming instruments, appliances, money, etc., found in a common gaming house "or on any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game or lottery . . . . .". It is only in relation to common gaming houses and where a search warrant has been issued in accordance with the provisions of section 16(1) of the Ordinance that the Magistrate is entitled to exercise his powers of forfeiture under section 16(2). The appellant was found gaming, not in a common gaming house, but in a public place.

Section 7(2) and (3) of the Ordinance enact:—

"(2) Any person gaming in any public place shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred and fifty dollars; and all instruments or appliances for gaming seized under this Section may be declared by the Court before which the conviction is had to be forfeited to the Government and shall be dealt with accordingly.

(3) Where any money or other valuable thing is used in the playing of any game of chance or of mixed chance and skill in any public place, the players shall be presumed, until the contrary is proved, to be or to have been gaming".

Under section 2 of the Ordinance instruments or appliances for gaming include "articles which are used in or for the purpose of gaming . . . .". When money is found — as in this case — placed on the square of a chart obviously used for gaming, no doubt it may reasonably be said that such money falls within the meaning of the words "articles . . . . used in or for the purpose of gaming". But in the absence of any words similar to those found in section 16(2), I am of the clear opinion that the provisions of section 7 must be strictly construed and that the power vested in the Court, upon a conviction, to order forfeiture must be confined to those instruments or appliances (including money) strictly proved to have been used in the playing of the game of chance and cannot be extended to include — as is the case under section 16(2) — money found on a person "escaping therefrom" which the Magistrate is merely of the opinion that such money was "used or intended to be used" in the game.

For these reasons, while the appeal against the conviction must be dismissed, that part of the sentence ordering the forfeiture of the $170.90 found on the person of the appellant must be set aside and the money refunded to him.

Order varied. Appeal dismissed.